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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/531,642	04/15/2005	Hal Christopher Salter	3017.2.1 NP	8362
7590 Starkweather & Associates 9035 South 1300 East Suite 200 Sandy, UT 84094				
EXAMINER FLETCHER, MARLON T				
ART UNIT		PAPER NUMBER		
2832				
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11/02/2009		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/531,642

Applicant(s)

SALTER, HAL CHRISTOPHER

Examiner

Marlon T. Fletcher

Art Unit

2832

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 June 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-5 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 4 and 5 is/are allowed.
- 6) ☒ Claim(s) 1 is/are rejected.
- 7) ☒ Claim(s) 2 and 3 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/CDC)
- Paper No(s)/Mail Date _____

- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claim 1 is rejected under 35 U.S.C. 103(a) as being unpatentable over Okita et al. (6,645,067).

Okita et al. disclose a method of instructing a user to read musical notation through interaction with a graphical user interface and an input device coupled to a drumpad, comprising the steps of: generating the graphical user interface (2 via 48), having a first position, including a virtual drum set (figures 7, 8, and 15), having a plurality of pads (58), each pad having a corresponding pad on the input drumpad (7-12); incorporating a music file into the graphical user interface, wherein the music file contains data corresponding to an arrangement of at least a first and a second musical note in sequence, having a rhythmic pattern (abstract and figures 7, 8, and 15); directing a first game object (54), representing the first musical note in the arrangement, downward, in a first substantially straight trajectory, toward a first pad on the virtual drumpad (figures 7 and 8), corresponding to the first musical note, such that the first game object will experience a first collision with the first pad column 7, line 60 – column 8, line 28); directing a second game object, representing the second musical note in the arrangement, downward, in a second substantially straight trajectory, toward a second

pad on the virtual drumpad, corresponding to the second musical note, such that the second game object will experience a second collision with the second bar or pad, according to the rhythmic pattern of the arrangement (figures 7 and 8; column 7, line 60-column 8, line 28); and e) awarding a value to the user based upon the user striking the corresponding key on the input drumpad approximately simultaneously with the first and second collisions (column 8, lines 10-28).

Okita et al. do not disclose upward trajectory.

It is well within the ability of one skilled in the art to change the arrangement in an upward trajectory, since it does not effect the operation of the apparatus. Arrangement is merely changes the direction of the object.

It would have been obvious to one of ordinary skill in the art at the time of the invention to change the arrangement in Okita et al., because this does not change the invention or the operation of the invention. It merely changes a view, while the elements and operation is the same.

Allowable Subject Matter

3. Claims 2 and 3 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

4. Claims 4 and 5 are allowed.

Conclusion

The applicant argues that the reference lacks the upward trajectory. While the examiner agrees, this is a feature that would be an obvious variation to one skilled in the art, since changing the trajectory of the object does not change what is known as the invention. It merely provides an object moving up rather than down. Therefore, the type of rejection was changed, because it is an obvious feature that is within the skill of one in the art.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Marlon T. Fletcher whose telephone number is 571-272-2063. The examiner can normally be reached on M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Elvin Enad can be reached on 571-272-1990. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

MTF
10/24/2009

/Marlon T Fletcher/
Primary Examiner, Art Unit 2832